

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
In the Matter of Access Charge Reform;)	
Reform of Access Charges Imposed by)	
Competitive Local Exchange Carriers;)	CC Docket No. 96-262
Petition of Z-Tel Communications, Inc.,)	
For Temporary Waiver of Commission)	CCB/CPD File No. 01-19
Rule 61.26(d) to Facilitate Deployment)	
of Competitive Service in Certain Metropolitan)	
Statistical Areas)	

To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS INC.

Cox Communications Inc. ("Cox") hereby files these reply comments in response to the Commission's August 3rd public notice in the above-referenced proceeding and responsive comments filed by AT&T Corp. ("AT&T") and Qwest Communications International, Inc. ("Qwest").¹ Through its Petition for Clarification or Reconsideration (the "Petition"), Cox has requested that the Commission clarify or reconsider its decision in the *Eighth Report and Order and Fifth Order on Reconsideration* regarding appropriate access charges in markets where competitive LECs operate multiple switches, one or more of which performs tandem switching functions.² Specifically, Cox asked the Commission to clarify that, when competitive LECs use

¹ Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2667, 69 FR 48234 (rel. August 3, 2004); AT&T Comments on Petition of Cox Communications, Inc. filed Aug. 24, 2004 ("AT&T Comments"); Comments of Qwest Communications International, Inc., filed Aug. 24, 2004 ("Qwest Comments").

² Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc., For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas, *Eighth Report and Order and Fifth Order on Reconsideration*, CC Docket No. 96-262, CCB/CPD File No. 01-19, FCC 04-110 (rel. May 18, 2004) (the

separate switches in a single service area to perform tandem and end-office switching functions, the Commission's rules permit them to charge IXCs for the switching functions the competitive LEC has, in fact, provided to route IXC traffic to its end user customers.³ Cox's request is the only result that is consistent with the Commission's finding that competitive LECs should be permitted to charge IXCs for the switching services they actually provide.⁴ Nonetheless, clarification is necessary because certain language in the *Order* appears to restrict the circumstances in which competitive LECs may charge for tandem switching only to cases where they are providing transiting traffic services to two other carriers and the competitive LEC's end-user customers are thus not involved.⁵

AT&T and Qwest filed comments seeking to block or place conditions on the Commission's grant of Cox's request. Those comments suffer from the common defect that they feign ignorance of competitive LECs' network architecture and routing. In fact, the interconnection of competitive LEC and IXC networks and the routing of IXC traffic are determined through negotiation, agreement, and joint engineering. As AT&T points out, IXCs always retain the right to provide direct trunking to competitive LEC end-offices. If they choose not to do so, then they have voluntarily decided to utilize competitive LECs' tandem switching capability and there is no reason they should be permitted to avoid tandem switching charges.

Similarly, AT&T's suggestion that granting Cox's request would create "perverse

"*Order*").

³ See Cox Petition at 3. In the *Order*, the Commission rejected Z-Tel's request that it be permitted to charge for tandem and end office switching functions provided by a *single switch*. *Order*, ¶¶ 19-21. Cox does not seek reconsideration on this point; Cox asks only that the Commission clarify that competitive LECs may charge separately for tandem and end-office switching when those services are performed by different switches.

⁴ *Id.*, ¶ 21.

⁵ Cox Petition at 1, 3.

incentives” for competitive LECs to build additional switches so that they could increase their revenue derived from IXC tandem access charges is absurd.⁶ Competitive LECs have no “incentive” to follow such a senseless course because they cannot force IXCs to interconnect at switches other than their end-office switches. The allegation that competitive LECs would spend large sums of precious capital to gain a small and uncertain amount of revenue should be summarily dismissed. Moreover, because IXCs retain control over where and how they connect with competitive LEC networks, the risk that competitive LECs will engage in unfair and circuitous routing of IXC traffic to overbill for tandem access charges is minimal, if not nonexistent, despite AT&T’s asserted fears.⁷

Indeed, far from being subjected to unfair routing practices, if the Commission rejects Cox’s Petition, IXCs would receive discounted tandem switching service from multi-switch competitive LECs. The Commission’s rules permit incumbent LECs to recover tandem switching charges in similar situations and there is no justification for treating competitive LECs differently. Nonetheless, AT&T proposes that competitive LECs should be permitted to recover tandem switching charges only when their “network architecture . . . and . . . routing arrangement in fact provide[] economic, technical or other benefits to the IXC”⁸ This novel and unexplained standard has no basis in law or the Commission’s precedents and must be rejected. Moreover, given that IXCs are permitted to directly interconnect with competitive LEC end-office switches, there must be an “economic, technical, or other” benefit any time an IXC interconnects with a competitive LEC tandem, or the IXC would not choose to do so. For that reason, competitive LECs should not be required to provide free or discounted switching services

⁶ *Id.*

⁷ AT&T Comments at 3.

through their tandem switches. If the IXC has elected to interconnect at the tandem, then plainly it should pay the cost of tandem switching. Otherwise, IXCs would be getting a free ride.

Cox does not understand Qwest to disagree with these basic principles.⁹ Qwest agrees that where competitive LECs provide tandem switching, they should be compensated for doing so.¹⁰ Qwest's assertion that having both a tandem and an end-office switch in the same service area should not serve as conclusive proof that the CLEC is performing both switching functions is not inconsistent with Cox's Petition. Cox seeks clarification that it may charge tandem rates only where competitive LECs (1) operate multiple switches in a market and (2) have used at least one of those switches to provide tandem switching for originating or terminating IXC traffic. Qwest's support for this clarification is appropriate given that, as an ILEC, its right to recover from other carriers for tandem switching has not been challenged.¹¹

Although competitive LEC multi-switch LATAs and tandem switching are unusual today, AT&T is wrong when it asserts that Cox's request is too hypothetical to grant.¹² Cox, for example, operates multiple switches in the Hampton Roads LATA. Currently one of its switches operates as a local tandem – and is so registered in the LERG – but all IXCs connect directly to Cox's end-office switches. In the future, however, as Cox's network grows, it can foresee a time

⁸ *Order*, ¶ 21; AT&T Comments at 3.

⁹ Qwest's only articulated objection to Cox's Petition is that the Petition does not specify the geographic area Cox intended by using the terms "market" and "service area." Qwest Comments at 1-2, 6-7. Cox submits that these terms are generally understood in the industry to refer to incumbent LEC LATAs.

¹⁰ Qwest Comments at 4.

¹¹ Cox notes that Qwest qualifies its support for Cox's Petition by asking the Commission to condition competitive LEC recovery of tandem access charges on whether the switch is identified as a tandem in the Local Exchange Routing Guide (the "LERG"). Qwest Comments at 5-6. Cox does not object to such a condition.

¹² AT&T Comments at 2.

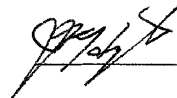
when one of its Hampton Roads switches may be used as a Feature Group D tandem. To grow their networks efficiently, competitive LECs like Cox must be aware of the regulatory regime that will govern their facilities once they have been built, including whether they will be permitted to recover their switching costs or whether they will be forced to provide IXCs with free or discounted service. Except for one ambiguous passage in the *Order*, the Commission has indicated that competitive LECs will be permitted to recover access charges for tandem switching in the situation described above. The Commission should grant Cox's Petition and clarify Cox's understanding of the rules.

CONCLUSION

For the reasons described above and in its initial comments, Cox respectfully requests that the Commission grant Cox's Petition and find that competitive LECs that perform traditional tandem switching functions on IXC traffic can recover access charges for those services, whether they connect to switches of other carriers or to their own subtending end office switches.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, hereby certify that a true and correct copy of the foregoing Reply Comments of Cox Communications, Inc. was sent on this 9th day of September, 2004, via hand delivery or where noted with an asterisk, via First Class U.S. Mail, to the following:

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